presumption under s. 37(d) of the Dangerous Drugs Act 1952 that he knew the nature of the thing under his control to be "dadah".

The crux of the charge against the Accused was that he trafficked in the raw opium. The presumption under s. 37(da)(v) of the Dangerous Drugs Act 1952, predicated on "possession" of 1,000 grammes or more in weight of raw opium, is that he trafficked in it. But the cautioned statement and the evidence discussed above negatived trafficking on the part of the Accused.

On all the evidence before me, I was fully satisfied that sufficient reasonable doubt had been cast by the defence during the prosecution case itself as to the knowledge and possession of 16.735 kilogrammes of raw opium by the Accused. In the circumstances, on all the evidence adduced at the close of the prosecution's case, the Court found that the prosecution had failed to establish a *prima facie* case which, if unrebutted, would warrant the conviction of the Accused. The Court accordingly found the Accused not guilty, acquitted and discharged him without calling for his defence.

PUBLIC PROSECUTOR

v.

LIN CHIEN PANG AKA "TEACHER LIN" "SAENWOO ASUE"

HIGH COURT, KUALA LUMPUR
DATUK HJ. MOKHTAR HJ. SIDIN J.
[FEDERAL TERRITORY CRIMINAL APPLICATION NO: 44-58-92]
19 JANUARY 1993

CRIMINAL LAW AND PROCEDURE: Extradition - Importation of heroin into the United States - Prima facie evidence - Examination of offence in the light of Malaysian laws - Whether offences were extra-territorial in nature - Offence committed outside jurisdiction.

EVIDENCE: Offences of conspiracy, aiding and abetting - Accomplice - Affidavit evidence - Not cross-examined - Probative weight - Corroboration by independent witness.

The respondent is alleged to have committed two offences, namely

(i) conspiracy to import into the United States (US), heroin in excess of 1 Kg. in violation of certain provisions of the United States Code; and
(ii) importing in excess of 1 Kg. of heroin in the US as an aider and abettor, in violation of the said Code.

The US government had requested that the respondent be extradicted in relation to the said two offences.

The learned Sessions Court Judge had held that the offences against the respondent had been proved but ordered the respondent to be discharged under s. 19(4) of the Extradition Act 1992 (the said Act) on the ground that the offences committed by the respondent were extra-territorial in nature and therefore were not extradition offences under the said Act.

The applicant applied under s. 37 of the said Act for a review of the decision of the learned Sessions Court Judge. The prosecution evidence against the respondent was based entirely on the affidavit of one Li Yong Jing, who had been arrested for the importation of heroin, the subject matter of the offences for which the respondent was charged. It was an undisputed fact that the respondent had never set foot in the US.

Held:

[1] It is obvious the offences upon which the request was made by the US government falls within paragraph s. 6(3) of the said Act. It is not disputed the importation of drugs including heroin is an offence in Malaysia where the punishment is not less than inprisonment for a year.

[2] It is clear from the affidavit evidence of Li Yong Jing, that he is a co-accused or at the very least an accomplice. Our law is clear as to the treatment of evidence of such persons. There is no doubt that the affidavit is a self-implicating statement which is tantamount to a confession. The affidavit was not subject to cross-examination.

[3] Even treating the evidence of Li Yong Jing to be evidence of an accomplice there must be corroboration of his evidence by independent witnesses. There is no evidence by any person whether by way of affidavit or otherwise who could confirm the meeting that took place between Li Yong Jing and the respondent in Bangkok. As such there is no independent witness to confirm what actually transpired between them to show what actually took place between the two of them. There is no independent evidence to show that what had been said by Li Yong Jing was true.

[4] Even assuming that the affidavit of Li Yong Jing is to be accepted in toto, there is no evidence to show that there was conspiracy, abetting or aiding by the respondent.

[5] The only evidence before the Court was that there was some heroin which landed in New York but there was no evidence that the heroin came from the respondent or that it was the same heroin that the respondent and Li Yong Jing conspired to import into the US. Though there could be an inference, the inference is a very weak one and without any supporting evidence. It could well be the heroin was from someone other than the respondent or from somewhere else.

[Application for review dismissed]

Cases referred to:

Koh Ah Chua v. P.P. [1948] MLJ 11 ***(refd)***
Yusoff & Anor. v. P.P. [1956] MLJ 47 ***(refd)***
Kassim v. PP [1949] MLJ 70 ***(refd)***
Karuppiah v. R [1949] MLJ 75 ***(refd)***
Tay Chong Beng & Anor. v. P.P. [1963] MLJ 131 ***(refd)***
Mobarik Ali Ahmad v. State of Bombay AIR [1957] SC 857 ***(dist)***
P.P. v. Loh Ah Soo [1974] 2 MLJ 216 ***(dist)***
Lee Szu Yui [1962] MLJ 49 ***(dist)***
P.P. v. Yong Nam Song [1964] MLJ 85 ***(dist)***
P.P. v. Khoo Ban Hock & Ors. [1988] 2 MLJ 217 ***(refd)***
P.P v. Rajappan [1986] 1 MLJ 152 / [1986] 1 CLJ 175 ***(foll)***

Legislation referred to:

Extradition Act 1992, ss. 6, 6(2), 19(4), 37
Penal Code, s. 420
Title 18, United States Code, ss. 2, 3551 (US)
Title 21, United States Code, ss. 952(a), 960(a)(1), 960(b)(1)(A), 963 (US)

For the Public Prosecutor - Mohd. Ramli Othman, SFC
For the respondent - Mohd. Shafee Abdullah; M/s. Shafee & Co.

JUDGMENT

Hj. Mokhtar Hj. Sidin J:

This is an application by the Public Prosecutor under s. 37 of the Extradition Act 1992 for a review of the decision of the learned Sessions Court Judge who had ordered the respondent to be discharged under s. 19(4) of the same Act. The grounds for review are contained in paragraph 5 of the affidavit in support of the Notice of Motion. The affidavit dated 6 October 1992 was affirmed by one Lee Oi Kuan. Paragraph 5 reads as follows:

> 5. Your humble applicant is dissatisfied with the said judgment, in particular with the findings or conclusions of the said Judge on the two (2) questions of law set out at pages six (6) to nine (9) of Exhibit "LOK 1", and which questions of law are reproduced as follows:
>
> (1) Are the offences alleged against the fugitive criminal extra-territorial offences?
>
> (2) If so, are they punishable under the Laws of Malaysia if they took place in corresponding circumstances outside Malaysia?

The offences for which the United States Government requested the respondent to be extradited are as follows:

Count One:	Conspiracy to import in excess of one (1) kilogram of heroin into the United States between May 1991 and 20 March 1992 in violation of Title 21, United States Code, s. 952(a), 960(a)(1), 960(b)(1) (A) and 963; Title 18, United States Code, s. 3551 *et seq.*
Count Two:	Importation of in excess of one kilogram of heroin into the United States on or about 13

January 1992 as an aider and abettor, in violation of Title 21, United States Code, s. 952(a), 960(a)(1) and 960(b)(1)(A); Title 18, United States Code, s. 2 and 3551 *et seq*.

It was contended by the applicant that the facts as tendered before the Sessions Court were that heroin was actually imported into the U.S. pursuant:

(i) to a conspiracy; and
(ii) aiding or abetting by the fugitive criminal.

It was also contended by the applicant that those offences were committed in the U.S. even though the respondent was never physically present in the U.S. at the material time. With that it appears to me that the applicant conceded that the learned Sessions Court Judge was correct when she stated that it was an undisputed fact that the respondent never set foot in the United States.

Before proceeding further it is better for me to set out the relevant facts as presented by the applicant. It is clear to me that the evidence against the respondent rests entirely on the evidence of one Li Yong Jing in the form of an affidavit which was marked as Exhibit F. In that affidavit Li Yong Jing stated that he first met the respondent in August 1990 when one person called "Ah Chai" introduced the respondent to him. The meeting was at a nightclub in Bangkok. There were casual talks between them and nothing more. Li Yong Jing then went back to New York. While in New York the said Li Yong Jing met one "Ah Nam" who was a government informer. At that time the said Li Yong Jing did not know Ah Nam was a government informer. The said Ah Nam informed Li Yong Jing that he had a company called "The Far East Trading Company". The said Ah Nam also told Li Yong Jing that he had the means to distribute heroin. Because of that the said Li Yong Jing went back to Bangkok and arrived there some time in **May 1991**. While in Bangkok he met the respondent several times and he was introduced by the respondent to a person by the name of Shiao Wu. According to Li Yong Jing he had some discussions about exporting heroin to the U.S.A. but it appears from the affidavit that nothing concrete materialised. The said Li Yong Jing admitted that he had discussed the possibility of exporting heroin to the U.S. with Ah Chai despite the warning by Shiao Wu not to do so and this confirms my view that the discussion with the respondent about the exportation of heroin to the U.S. had not materialised. From that it appears to me that the said Li Yong Jing was shopping for heroin to be exported to the U.S. Sometime in June or July 1991 the respondent informed the said Li Yong Jing that the heroin had been loaded but refused to tell Li Yong Jing where the heroin was located. After that the said Li Yong Jing left for China. Sometime in August or September 1991 the said Li Yong Jing was asked through the phone by Shiao Wu to return to Hong Kong. He also requested Li Yong Jing to ask Ah Nam to come to Hong Kong.

In Hong Kong Shiao Wu told Li Yong Jing that the heroin had been shipped from Singapore. Shiao Wu also informed Li Yong Jing that the heroin was hidden in wooden crates that contained porcelain Chinese vases. According to Li Yong Jing he was also shown by the said Shiao Wu photographs of the crates. Sometime on 14 September 1991 the said Li Yong Jing met Ah Nam and another person in Hong Kong where the said Li Yong Jing showed them the same photographs. From this it appears to me that the photographs were in the possession of Li Yong Jing but these photographs were never produced to confirm the story. Li Yong Jing also showed them the invoices for the shipment which according to Li Yong Jing were handed to him by Shiao Wu. This is the first piece of evidence of conspiracy (if any) between Li Yong Jing and Shiao Wu. It was clear from the evidence that the Respondent was never there. Later while Li Yong Jing was in Hong Kong he met Shiao Wu who informed him that the amount of heroin was much less than the original amount told to him by Shiao Wu. Li Yong Jing in turn informed Ah Nam of this on 17 September 1991. This evidence to me is important because it tends to show that all the parties were in Hong Kong when they knew of the actual amount of heroin exported to the U.S. When the said Ah Nam asked for confirmation of the shipment, the said Li Yong Jing told him the shipment documents had been forwarded to the office in Bangkok to be forwarded to the office of Far East Trading in New York. There is no evidence to show the office in Bangkok belonged to the respondent. The said Li Yong Jing then left for China. On 8 October 1991, while in China Li Yong Jing rang up Ah Nam in New York inquiring whether he had received the fax in New York and Ah Nam confirmed it.

On or about 10 January 1992, Li Yong Jing telephoned Ah Nam in New York inquiring about the heroin shipment and also informed Ah Nam that he was in Hong Kong and gave his phone number. According to the DEA sometime on 13 January 1992 the carrier carrying the heroin arrived at the Port of New York and New Jersey. The United States Customs seized the crates and eventually found the heroin. Sometime on 16 January 1992 Ah Nam telephoned Li Yong Jing and asked him to come to New York to collect the money instead of him sending it to Hong Kong. On 23 January 1992 Li Yong Jing called Ah Nam and told him that he was in New York to accept the payment. Ah Nam and another undercover agent of DEA then met Li Yong Jing in New York's Chinatown where according to Ah Nam, Li Yong Jing told him he worked for a Chinese boss in Thailand, but no name was ever mentioned. Sometime on 27 January 1992, Li Yong Jing met Ah Nam and the other undercover agent again at a restaurant when Li Yong Jing was arrested when the sum of US$2 million was to be paid to him.

It is clear from the evidence that only after his arrest did the said Li Yong Jing agree to tell the DEA about his connections with the heroin seized and it appears that only then did he name the respondent as his boss. According to the documents forwarded to the Court below it was only after the arrest that Li Yong Jing agreed to cooperate with the United States authorities. Due to this cooperation and at the instigation and supervision of the DEA Li Yong Jing allegedly agreed to telephone the respondent and the telephone conversations were taped. Altogether there were six telephone conversations purportedly between Li Yong Jing and the respondent. Five of them were made from New York to Bangkok and the last one was made from New York to Kuala Lumpur. All the conversations were in respect of money to be paid and they also mentioned some heroin. Those were the facts that are relevant to the present case.

The first question for me to consider though not raised by parties, was there actually a conspiracy, aiding or abetting on the part of the respondent. To me this is important before one could proceed to the next question whether that offence in question is extra-territorial or otherwise. In my opinion it is the duty of the applicant to establish that the respondent did commit one or all of the above offences. If there are no such offences being established then the necessity to consider extra-territorial or otherwise will not arise.

For the purposes of extradition, it must be an extradition offence as defined in s. 6 of the Extradition Act 1992. Section 6 provides as follows:

> 6 (1) A fugitive criminal shall only be returned for an extradition offence.
>
> (2) For the purposes of this Act, **an extradition offence is an offence**, however described, including fiscal offences:
>
> (a) which is punishable, under the laws of a country referred to under paragraph 1(2)(a) or 1(2)(b), with imprisonment for not less than one year or with death; and
>
> (b) which, if committed within the jurisdiction of Malaysia, is punishable under the laws of Malaysia with imprisonment for not less than one year or with death.
>
> Provided that, in the case of an extra-territorial offence, it is so punisnable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia.
>
> (3) **An offence shall also be an extradition offence if it consists of an attempt or a conspiracy to commit or an abetment of the commission of, any offence described in subsection (2)**.
>
> (Emphasis is mine).

It is obvious to me the offences upon which the request was made by the United States Government falls within paragraph (3) of s. 6. It is not disputed the importation of drugs including heroin is an offence in Malaysia where the punishment is not less than a year.

Now let me turn to the question whether the offences for which the request for extradition was made if committed within the jurisdiction of Malaysia, is punishable under the Laws of Malaysia with imprisonment for not less than a year or with death. First of all it must be established that the offences as alleged by the United States Government are offences in Malaysia. When I said offences, there must be evidence of a *prima facie* case otherwise there are no offences for which a person could be extradited. For that purpose I must examine the evidence in the light of Malaysian Laws including whether the evidence is admissible under

Malaysian Laws. It is in this light I have to view the evidence given by the United States Government as I have stated earlier. To me that is the requirement under s. 6(2) of the Extradition Act 1992. To me it is no good for the Requesting State which is in this case the United States merely to say that the fugitive criminal had committed an offence or offences in the U.S. and thereby the Requested State which is in this case Malaysia must accept that an offence or offences had been committed.

It appears from the evidence that only one person by the name of Li Yong Jing is said to have met the respondent. As I could see the only evidence available against the respondent is the evidence of Li Yong Jing. It is clear the evidence given by him was by way of an affidavit. It is also clear from the evidence that when the affidavit was sworn the said Li Yong Jing had been arrested for the importation of heroin which is the subject matter of the offence or offences of which the respondent was accused of. With that I am of the view that the said Li Yong Jing is a co-accused or at the very best an accomplice. Our law is clear as to the treatment of evidence of such persons. There is no doubt in my mind that the affidavit is a self-implicating statement which in my view is tantamount to a confession. It is to be noted that the affidavit was not subjected to cross-examination. In this respect I would like to refer to the case of *Koh Ah Chua v. PP* [1948] MLJ 11 where it was held as follows:

> ... although the Court may take into consideration the confession of a co-accused duly made before a magistrate and proved at the trial, its weight is slight. Not being made on oath or subject to cross-examination, it is of even lesser weight than the evidence of an accomplice. A person making such a confession usually attributes the chief blame to others. Such evidence is not ordinarily sufficient without corroboration.

In another case of *Yusoff & Anor. v. PP* [1956] MLJ 47, where it was an appeal against the conviction of the appellant for the murder of an unknown Malay woman, the prosecution case depended almost entirely on a confession made by the second appellant to a Magistrate. That confession laid the entire blame for the killing on the first appellant. When brought before the Magistrate the second appellant told the Magistrate that he decided to tell the truth as his wife would be kept in trouble by his being detained. It was held that:

> (1) As there was a suggestion that there was a motive other than the desire to tell the whole truth in the mind of the second appellant when he made his confession and as it appeared that certain statements in the confession could not be true, it was necessary for the trial Judge to examine the question was voluntary and whether its contents bore the stamp of truth;
>
> (2) even accepting the confession of the second appellant as being both voluntary and true, such a confession alone was insufficient upon which to base the conviction cf the first appellant.

Even treating the evidence of Li Yong Jing to be evidence of an accomplice which I am inclined to do, there must be corroboration of his evidence by independent witnesses. As could be seen from the charges they are offences of conspiracy, aiding or abetting, another person other than the respondent must exist in order to commit those offences. From the evidence it is clear to me that the other person was Li Yong Jing. It was clear from the evidence that the importation of the heroin into the U.S. was at the instigation of Li Yong Jing. It was Li Yong Jing (if any) who asked the respondent to export the heroin to the U.S. and it was also Li Yong Jing who went to New York to look for a syndicate to accept the consignment. As such it is clear to me that the said Li Yong Jing was an accomplice. What is the status of an accomplice's evidence? There are numerous authorities in Malaysia in respect of this. I would like to refer to the case of *Tay Chong Beng & Anor. v. PP* [1963] MLJ 131 where it was held:

> Where accomplice evidence is given, the Judge must warn himself that this evidence must be treated with great caution, and that there is necessity **for corroboration in a material particular implicating the accused**.
>
> (Emphasis is mine).

What is meant by corroboration. This is clearly stated in two cases:

(1) *Kassim v. PP* [1949] MLJ 70 where it was stated as follows:

> The corroboration that is required when the evidence is that of an accomplice and not necessarily give independent support to every factor of the case against the

accused and it is sufficient if the corroboration corroborates some material part of the accomplice's story which identifies both him and the accused person with the offence charged and goes towards the identity of the accused person.

(2) *Karuppiah v. R* [1949] MLJ 75 where it was held as follows:

(1) that one accomplice cannot corroborate another;

(2) that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime;

(3) that the learned district judge had in this case accepted evidence, circumstantial and otherwise, as corroborative which was not, in law, corroborative evidence and therefore the conviction must be quashed.

In my opinion the position is the same in respect of confession of a co-accused and evidence of an accomplice in countries applying the common law in order for it to be relied on in any Court.

Corroboration required in the present case is in respect of evidence of conspiracy, aiding or abetting in the importation of heroin into the United States. It is clear from the evidence that the respondent never set foot into the United States or Hong Kong. As such I have to view the offence of conspiracy, abetting or aiding in the light what actually happened in Thailand. The only evidence adduced before the lower Court was the affidavit of Li Yong Jing. Is there any evidence to corroborate that affidavit? I find there is no evidence by any person whether by way of affidavit or otherwise who could confirm the meeting that took place between the said Li Yong Jing and the respondent in Bangkok. As such there is no independent witness to confirm what actually transpired between them to show what actually took place between the two of them. There is no independent evidence to show that what had been said by Li Yong Jing was true. The applicant relied on the fact that the heroin had landed in New York and seized by the Customs there as a basis for corroboration. With the greatest respect there is nothing to show that the heroin in fact originated from the respondent. At the most there was only an inference that it originated from the respondent. To me the heroin originated from Shiao Wu. Another fact relied on by the applicant to show there was corroboration was the six telephone conversations purportedly to be between Li Yong Jing and the respondent. First of all there is no evidence whatsoever that the person on the other end of the line was the respondent. It was Li Yong Jing all the time who made the assertions that the other side was the respondent. Taking into consideration the number of times the two had met was there sufficient evidence to show that Li Yong Jing could positively identified the voice of the respondent? Secondly, I have gone through the transcripts of the taped conversations and I could not find any evidence to show that the heroin seized by the Customs was the heroin sent by the respondent. Most of the time they were talking about money collections.

From the above I could not find any corroboration on the affidavlt of Li Yong Jing. As such I am of the view that it is unsafe to rely on the evidence of Li Yong Jing to prove the offences against the respondent.

Even assuming that the affidavit of Li Yong Jing is to be accepted in toto is there any evidence in the affidavit to show that there was a conspiracy between Li Yong Jing and the respondent? From the affidavit there was evidence to show that there were meetings that took place between the two of them. From the affidavit it could not be denied that there was some discussions about heroin. It appears to me that the discussions were mostly one sided which was on the part of Li Yong Jing. It was Li Yong Jing who suggested the exportation of heroin to the U.S. It appears that Li Yong Jing only showed interest but there was no indication that he agreed to the proposal. What I meant by interest was when he suggested to Li Yong Jing to have a syndicate in New York to accept the consignment and distribute the heroin. On that basis the said Li Yong Jing went back to New York where he met Ah Nam who informed he had a company in New York to accept the consignment and to distribute the heroin. With that Li Yong Jing went back to Bangkok where he purportedly met the respondent and informed him of the arrangement. It appears from the affidavit he did not agree or commit to do anything. He was more or less passive. Subsequently he informed the said Li Yong Jing that there was some heroin being loaded in a ship. There is no evidence whatsoever as I have said earlier that the heroin was the same one seized

by the Customs. From then onwards the respondent disappeared from the scene to be replaced by Shiao Wu who appears to me from the affidavit played an active part in the negotiations with Li Yong Jing on the exportation of heroin and the collection. Though the applicant tried to infer that Shiao Wu was working for the respondent, there is no evidence to support it. From this it appears to me the negotiations and the actual exportation of heroin to the U.S. (if any) were between Li Yong Jing and the said Shiao Wu. It appears to me that it was Shiao Wu who made all the arrangements and gave all the instructions. It appears from the affidavit Shiao Wu was acting on his own. As such I could not find any evidence of criminal conspiracy, aiding or abetting on the part of the respondent. As to the telephone conversations they were in respect of money collection and some heroin but there was nothing to show that the heroin mentioned was the one seized by the Customs.

For the above reasons, I am of the view that the learned Sessions Court Judge had erred in law when she held that there was evidence of conspiracy, abetting or aiding because it was against the weight of evidence. For this reason I am of the view that the respondent had not committed any offence.

Assuming that there was evidence of conspiracy, aiding or abetting, as found by the learned Sessions Court Judge in my view she was correct in considering whether the offences were extra-territorial. If they are so whether the Extradition Act applies. In respect of this the learned Sessions Court Judge in judgment stated as follows:

> However there is inserted a proviso to s. 6(2) which says:
>
> > Provided that in the case of an extra-territorial offence, it is so punishable under the Laws of Malaysia if it took place in corresponding circumstances outside Malaysia.
>
> The questions before the Court now are:
>
> (1) Is this an extra-territorial offence? and
>
> (2) If so, it is punishable under the laws of Malaysia if it took place in coresponding circumstances outside Malaysia.
>
> It is evidenced before the Court that this is an extra-territorial offence. It is undisputed fact the fugitive criminal has never set foot in the United States before, during or after the commission of the alleged offences. He had all the time been based in Bangkok and had come to Kuala Lumpur, to receive the proceeds of the sale of shipment of heroin. ...
>
> It may be that the fugitive criminal had committed an offence or offences punishable under the laws of the United States, but after carefully considering the provisions of s. 6 of the Extradition Act, I am of the view that the offences committed by him against the United States, is not punishable under the laws of Malaysia since the second limb of s. 6(2b) is not satisfied. The Dangerous Drugs Act having no extra-territorial effect offences under it if committed outside the jurisdiction of Malaysia is not punishable under the laws of this country. As such the offences committed by the fugitive criminal are not extradition offences under the Extradition Act 1992.

The applicant contended that those offences were not extra-territorial offences as found by the learned Sessions Court Judge. It was submitted that since the heroin was actually imported into the United States pursuant to the conspiracy, aiding and/or abetment thereof by the respondent, the respondent had committed the offences in the U.S. To support this the applicant cited the case of *Mobarik Ali Ahmad v. State of Bombay* AIR [1957] SC 857. In that case it is clear to me that the evidence shows that the offence of cheating under s. 420 of the Penal Code was partly carried out in Karachi and partly in Bombay. Without the representation being made in Bombay it appears there would be no offence being committed at all. This is clear from the facts of the case. In the present case there is no evidence to show that the heroin which landed in New York was the same heroin that the respondent and Li Yong Jing conspired to take into the United States. The only evidence before the Court was that there was some heroin which landed in New York but there was no evidence that the heroin came from the respondent or that it was the same heroin that the respondent and Li Yong Jing conspired to import into the U.S. Though there could be an inference, in my view the inference is a very weak one and without any supporting evidence I could not come to the conclusion as submitted by the applicant. It could well be the heroin was from someone other than the respondent or somewhere else. This is the same with the telephone conversations. The conversations though mentioned about money and heroin, I could not find any evidence to show that the heroin was the same one which both respondent and Li Yong Jing conspired, aided or abetted to be imported into the U.S. There is also no evidence to show that the money collection

mentioned in the telephone conversations was in respect of the same heroin.

In addition to the case of *Mobarik Ali Ahmad* the applicant also cited the case of *PP v. Loh Ah Soo* [1974] 2 MLJ 216; *Lee Szu Yui* [1962] MLJ 49 and *PP v. Yong Nam Song* [1964] MLJ 85 to support his contention. In my view in those cases/ there were clear evidence to show that the Accused persons in those cases were the people who had signed the declaration forms which were used to commit the offences. Thus those cases could be easily distinguished from the present case. The applicant also referred to the case of *PP v. Khoo Ban Hock & Ors.* [1988] 2 MLJ 217. I agree with the learned defence Counsel for the respondent that the facts stated in that case were insufficient in order for me to make any ruling that the principle in that case could be applied in the present case.

The question whether the offence is extra-territorial or otherwise had been discussed at great length in the case of *PP v. Rajappan* [1986] 1 MLJ 152. This was a decision of the Supreme Court consisting of five judges which appears to me a very strong panel. The accused in that case was charged for bigamy when he married another woman in India when the first marriage was still subsisting. The accused then brought the wife of the second marriage to Malaysia and lived with her. It appears that the bigamous marriage continued in Malaysia. The Supreme Court held that the Court in Malaysia had no jurisdiction to try the Accused since the second marriage took place outside Malaysia.

For the above reasons I agree that the learned Sessions Court Judge was correct in holding that the offences were extra-territorial in nature. She had come to the correct conclusion.

The case of *PP v. Rajappan* also dealt at great length with the second question posed by the applicant. There is no necessity for me to repeat them. It is sufficient for me to say the learned Sessions Court Judge had applied the principles correctly in the present case. I agree with the conclusion made by the learned Sessions Court Judge. Her decision in respect of this is hereby confirmed and she was right in her decision in refusing to order the extradition of the respondent.

I therefore dismissed the application by the applicant.

PUBLIC PROSECUTOR

v.

SAW AH KOW

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK B.
HJ. ISHAK JC.
[CRIMINAL TRIAL NO. 58-2-92 (88)
23 JANUARY 1993

DANGEROUS DRUGS: Trafficking in dangerous drugs, to wit, cannabis - Section 39(1)(a) Dangerous Drugs Act 1952 - Drugs found in kitchen of house - Accused is owner of house - Three other individuals were in kitchen at the time of raid by police officers - No evidence adduced by prosecution whether the 3 individuals were visitors, occupants or tenants of house - All the 3 individuals and accused were arrested and brought to police station - Search list signed by accused and 3 individuals - Owner of house was charged for trafficking but no evidence adduced as to whereabouts of other 3 individuals - At end of prosecution case 3 individuals who were absent offered to defence - Whether the 3 individuals were material witnesses for prosecution.

EVIDENCE: Scope of s. 114(g) of Evidence Act 1950 - Whether withholding of material document or suppression of evidence - Non-production of not just any witness but important and material witness - No reasonable explanation given for failure to produce the 3 individuals - Whether reasonable to draw adverse inference and invoke s. 114(g) Evidence Act 1950 against prosecution.

EXHIBITS: Movement of exhibits while it was with chemistry department - Whether prosecution must show positively that appropriate steps taken by government chemist to ensure safe custody - Identity of drugs produced in Court - Whether serious break in chain of evidence - Vital evidence to link accused with drugs - Whether fingernail clippings or hand swabs or fingerprint taken from accused - Inference favourable to accused to be drawn from a set of facts available to Court.

EXPERT: Investigation Officer attended Hokkien language course at INTAN - Whether having attended Hokkien language course at INTAN qualifies the Investigation Officer as an expert in linguistics especially Hokkien language.

The Accused, an owner of a house was charged with trafficking in dangerous drugs, to wit, cannabis weighing 1052.06 grammes on 26 July 1988 at about 7.45 p.m., an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Act 234) and punishable under s. 39B(2) of the same Act.